

## Rep. Nadler Offers Assessment of Federal Response to 9.11 in Front of National Commission

Wednesday, 21 May 2003

WASHINGTON -- Rep. Jerrold Nadler (D-NY) today laid out his evaluation of the Federal response to the September 11th attacks, in front of the National Commission on Terrorist Attacks Upon the U.S. The full text of his testimony is attached.

In his testimony, the Congressman highlighted governmental agency response in the areas of financial aid, public health and the environment, and national security.

While Rep. Nadler praised the Executive and Legislative branches for their quick response in passing an emergency aid package for New York, he was pointedly critical of the work of a few agencies, such as the Environmental Protection Agency and the Federal Emergency Management Agency.

In addition, he laid out three security priorities for the Federal government to prevent future attacks. The three proposals are: the purchase of excess weapons-grade nuclear materials in Russia; the inspection of 100% of all containers bound for the US via ship; and the protection of airliners from attack by surface-to-air fired shoulder missiles.

In his final recommendation to the Commission, Rep. Nadler said, "I ask [the commission] not to forget that we are talking about the lives of very real people, and these laws, regulations, and procedures have very real effects on their lives. As a New Yorker, I know that all too well. So, on behalf of my fellow New Yorkers, I urge the commission to think in terms of the human impact as it considers the governmental response to September 11th."

According to its website, "The National Commission on Terrorist Attacks Upon the United States, an independent, bipartisan commission... is chartered to prepare a full and complete account of the circumstances surrounding the September 11th terrorist attacks, including preparedness for and the immediate response to the attacks. The Commission is also mandated to provide recommendations designed to guard against future attacks."

Rep. Nadler has served in Congress since 1992. He represents the 8th Congressional District of New York, which includes parts of Manhattan and Brooklyn.

May 22, 2003

U.S. REPRESENTATIVE JERROLD NADLER (NY-08)

NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE U.S.

Thank you for the opportunity to testify today. I want to share my first-hand knowledge of events that transpired in New York following the September 11th attacks. I understand this commission is tasked with making recommendations to improve the government's ability to detect, prevent, and respond to terrorist attacks. I will focus my comments primarily on the events in New York and our reaction to the attack, but I would also like to provide you with a few suggestions on ways to both detect and prevent future attacks.

### My September 11th

I was in Washington, DC in my hotel room on September 11th. I turned on the TV to check the weather and I saw one of the twin towers on fire. Then I watched live as the second plane flew into the trade center. I knew immediately that it was a terrorist attack, and I thanked God, that the terrorists did not have nuclear weapons.

Like most Americans, I saw these events unfold on TV. Unlike any other American, I was the one person who represented that area of Manhattan in Congress. This massacre was not happening in some distant city. This was my New York. These dead were my constituents and my friends.

I immediately decided that I had to be with my constituents. I left my hotel room in Washington, DC to return to New York. It was only on my way to Union Station that I learned that the Pentagon was also hit, and other hijacked planes could be out there. Normally, as I approach New York on the train, somewhere around Northern New Jersey, I can peer out the window and see the Twin Towers standing tall, welcoming me home, warmly. On September 11, I looked and saw a plume of smoke where the towers once stood. I felt empty. I felt violated. But that feeling, as intense as it was, would never be matched by how I felt walking through Ground Zero the next day.

As I toured the area with officials from FEMA, walking through the ruins of the World Trade Center, where there were thousands of bodies buried in the rubble, I felt an overwhelming sense of grief, of sickness, and of anger.

### Ground Zero Elected Officials Task Force

As I toured the devastation with the Mayor and the Governor, I was impressed with the plans they were putting in place to respond to the attacks. I assumed they would be preoccupied with the immediate problems of rescue and recovery, and of getting the economy, especially Wall Street, back on its feet and that many problems faced by local residents and small businesses would fall through the cracks. Therefore, I formed the Ground Zero Elected Officials Task Force to coordinate the efforts of all the government representatives from the area. The main goal of the Task Force was to assess the needs of the community in Lower Manhattan, and to ensure that those needs were addressed by the appropriate government agencies. When you pool together the staffs of all the state and city elected officials and of a Congressional office, you have a formidable outreach organization that can ascertain the most urgent problems facing the residents and businesses in the area and we can work toward addressing those problems. We could also, and did, perform a triage function by fielding thousands of calls from people seeking help, and distilling from them the most crucial and immediate tasks to press on FEMA and the Mayor's and Governor's people.

For example, while many people were evacuated from their homes, many more remained behind, especially seniors. These seniors needed to get their medications, but all of the pharmacies in the area had been closed. There were armed troops at every intersection, and no one, and no supplies, could get through. So we ensured the delivery of medicines to those who needed it in the days immediately following the disaster, despite the fact that the pharmacies, which had the prescriptions, were closed. We got the Governor to suspend enforcement of the state law that prohibited a pharmacy from filling a prescription at a different pharmacy.

## Legislative Response

On the legislative level, I worked with my colleagues in the New York delegation to secure as much funding as possible to help New York recover from this devastating attack. We met together several times, and our staffs were in constant contact to try to calculate the loss and to estimate what would be required to rebuild. We met with the President and asked for his support for a twenty billion dollar package. He granted our request without hesitation.

We realized very quickly that the attack was devastating to small businesses all over the downtown area, not to mention to the tourism and entertainment industries all over New York City, and that existing loan programs were wholly insufficient to begin to meet the needs of devastated small businesses. I worked very hard to establish a program to provide direct grants to small businesses to cover their losses. Clearly the SBA was not designed to handle an attack of this magnitude, and during a disaster they must be allowed much more flexibility to provide loans and grants to those who need it.

Hundreds of people were helped by the Mortgage and Rental Assistance program, which was essential in the wake of the attacks. This provision should not be allowed to expire, and I have written legislation to extend the program. When disaster strikes and thousands of residents are forced from their homes, it is essential to have in place a system to help families find shelter.

Our office also worked closely with FEMA. FEMA funds, of course, paid for the clean up of the debris, which was accomplished very quickly, and I applaud them for that. However, possibly because they had other pressing matters to attend to, they were not nearly as responsive to my constituents as I would have liked. My office had to usher a good number of people through the FEMA process, and open doors for them, simply so that they could get the aid they were entitled to. People should not have to rely on a Congressional office to get the aid they deserve.

Additionally, it is clear that many OSHA standards designed to protect the workers were not followed in the clean up. I understand that in the haste to get as much done as possible in the first days, when there was still a hope of rescuing people buried in the rubble, there may have been a lag time in instituting safety procedures, and I am more than willing to say that, in the immediate aftermath of the attacks, there was some confusion, to say the least. However, a short delay in instituting safety procedures is not what happened. Some workers on the site were never given the correct Personal Protective Equipment (PPE), such as respirators, to protect themselves against the hazardous debris and fumes. Testimony at hearings stated that many police officers worked on the "pile" without respirators for 41 days. This is inexcusable. The term "World Trade Center Cough" should never have entered our lexicon. Now that it has, however, the government must commit to funding life-long health monitoring, including physical examinations, of all the World Trade Center workers.

## The EPA

If there is one federal agency whose response was grossly inadequate it is the EPA. The Agency did not seriously address the presence of hazardous waste, such as lead, mercury, asbestos and PCBs to name just a few, in people's homes, schools and businesses, and continues what can only be called a willful cover-up to this day. Beginning just two days after 9/11, with EPA Administrator Christie Todd Whitman's completely false statement, based on NO empirical data, that "the air is safe to breathe and the water is safe to drink," the EPA systematically misled the public about the safety of the environment.

In the days following the attack, the Task Force heard countless complaints from citizens who suffered from adverse health effects, and/or lacked the resources necessary to test and clean their apartments and buildings properly. When EPA was presented with such information, the agency either maintained that everything was safe, or claimed that the

City of New York was in charge of indoor environments and that EPA had no authority for ensuring indoor air quality. The agency maintained this position even after being presented with independent test results, conducted by long-time EPA contractors, which showed elevated levels of hazardous materials inside downtown apartments.

This situation made it very difficult to address the mounting casework from constituents who had literally nowhere to go to get hazardous waste out of their homes. Citizens were left to fend for themselves, often ended up in court proceedings against their landlords and building owners, and expended vast resources on a cleanup downtown that was not conducted adequately or systematically, but rather on an ad-hoc basis, if done at all.

After four months of this untenable situation, I asked the EPA National Hazardous Waste Ombudsman, Robert Martin, and his Chief Investigator, Hugh Kaufman, to investigate. Their involvement produced a sea change in the relationship of my office, as well as of local residents, with EPA. My position has always been that EPA should use its existing authority to take any and all actions necessary to find out where hazardous materials went following the collapse of the World Trade Center, and to remediate contaminated spaces, and that New York should not be treated differently from other parts of the country where the EPA has engaged in proper response activities to hazardous waste releases. Ombudsman Martin and Mr. Kaufman were able to tell us what the EPA should have done, could have done, and has done at other hazardous waste sites around the country. But most importantly, the Ombudsman process provided a forum to communicate with my constituents, listen to their complaints and concerns, issue requests for the production of documents and interrogatories, hold public hearings, bring in experts from around the country to help the citizens understand the full magnitude of the issues, make recommendations for corrective action, and truly get to the bottom of what EPA did and did not do. Through these activities, the Ombudsman process documented areas where the EPA was not following the law and standard procedures in the World Trade Center case, and recommended corrective action to protect the public.

The key to all of this is that it was a public and transparent process. We held two eleven-hour hearings that were open to the public, documented with a court reporter, the transcripts of which are available to anyone. We heard from residents, workers, business owners, city and state elected officials, firefighters, police officers, parents, and the NYC Board of Education. We would have liked to hear from the government agencies, in particular EPA, but they declined to participate.

Except for the Ombudsman, the EPA has yet to engage in a public and transparent process regarding the cleanup of the World Trade Center. If anything, it has done just the opposite. Questions have gone unanswered, and information obtained only through FOIA, if at all. Trying to get the agency to act has been a lengthy, arduous, and often unsuccessful process. The Ombudsman process was essential to address citizen complaints, and focus public pressure on the agency to resolve those complaints.

In the four months after September 11th, the EPA maintained that everything was safe, directed people to the city government for relief (a city government that offered no relief to people other than to tell them to clean up asbestos-laden dust with a wet mop and wet rag), and ultimately remained unresponsive to citizens. After the Ombudsman hearings, in May 2002, eight months after the attack, EPA reversed its policy and agreed to initiate remediation inside people's homes. Of course, there were many factors that contributed to this policy shift, but I do not believe it would have happened, or happened so quickly, without the Ombudsman process, and the expertise and hard work of Mr. Martin, his Chief Investigator Hugh Kaufman, and the people who worked with them to use the Ombudsman process so effectively.

Yet, the EPA cleanup plan is woefully inadequate in many respects. For example:

- The EPA will clean apartments only on request, ignoring the threat of cross- and recontamination from uncleaned apartments and from building HVAC systems.
- The EPA will test for asbestos only in the air, and will not assess dust or hard surfaces that are also pathways of exposure.

- The EPA will not test for any of the other contaminants that were present in World Trade Center debris, such as lead, mercury, dioxin and fine particulate matter.
- The cleanup plan is available only south of an arbitrary boundary at Canal Street, cutting off other areas covered by the debris cloud, including parts of Brooklyn, Chinatown and the Lower East Side. Besides not dealing with many potentially contaminated areas, this presents an environmental justice problem.
- The EPA will not clean commercial spaces and schools.
- The workers will not be wearing protective gear, which would seem to be a clear violation of OSHA regulations.

The EPA has developed this plan without public comment, and has not established a Citizens Advisory Group or held public meetings. It has not even established an Administrative Record accessible to the public.

The EPA's cleanup plan for World Trade Center debris does not comply with applicable laws and regulations, such as the National Contingency Plan, OSHA regulations, and Presidential Decision Directive 62 (PDD 62). The agency must be forced to comply with these laws and regulations, and must adopt a public and transparent process. And the Ombudsman's office, which was effectively dismantled by Administrator Whitman, must be revived to ensure the agency fulfills its responsibilities properly, and in accordance with the law.

## How to Prevent Terrorist Attacks

I fear we are not doing what we must to prevent a future nuclear attack by terrorists. The greatest danger we face is that Al Qaeda, or a similar group, will obtain nuclear bombs. The knowledge, and the ability to make, atomic bombs is widespread - provided you have access to weapons-grade uranium and plutonium. Enough weapons-grade material to make 40,000 bombs is now in the former Soviet Union, in conditions of doubtful security. Under the Nunn-Lugar Act, the U.S. has agreed to purchase this material over a thirty-year period. I believe the United States should purchase this material now -- not over a thirty-year period -- before it is stolen or purchased on the black market by Al Qaeda. At a cost of \$25-\$30 billion, we can buy this material, and safeguard it from smuggling or theft until it can be rendered unusable for weapons.

Secondly, we must prevent the smuggling of nuclear and other weapons into American ports. Currently, we inspect only about two percent of the 6 million containers entering our ports annually. We will not be safe until we inspect 100 % of these containers. We must insist that no container is put on a ship bound for the United States in a foreign port until that container has been inspected, sealed, and certified by an American (or joint) inspection team at the foreign port or at the point of origin of the container.

We must further insist that no ship or boat be allowed to approach closer than 150 or 200 miles to an American shore until that ship or boat has been boarded and searched from stem to stern by the Coast Guard or the Department of Homeland Security. (And any container or other goods landed on a ship in North America that hasn't been inspected must be inspected at the border before entering the United States.)

We should also demand that all commercial planes be equipped, at Federal expense, with missile-deflection systems. I support legislation introduced by Rep. Israel and by Senators Boxer and Schumer that would equip commercial airlines with missile defense systems. This would greatly improve our ability to prevent a successful terrorist attack on a commercial airplane.

These recommendations would go along way toward making our country safer from the threats posed by terrorists. It is absolutely essential that we address these threats sooner rather than later. I never want another American to feel the way I did as I walked amid the rubble of my hometown in the days following September 11th.

Finally, the Federal Government must meet the needs of first responders all across this country. With state and city governments facing severe budget crises, police and fire department budgets are being cut dramatically. First responders are the frontline in Homeland Security. The Federal Government must cover the costs of response, as well as the protection of proven terrorist targets, such as New York City.

## Conclusion

Thank you, again, for the opportunity to come here and testify today. September 11th was easily one of the most terrible days in my life, and the aftermath was the toughest period I've ever had in my public career.

As a public official, I have a responsibility to think about September 11th and its aftermath in terms of laws, regulations, and procedures. Much of that is reflected in my testimony today.

But as the Commission considers this matter, I ask you not to forget that we are talking about the lives of very real people, and these laws, regulations, and procedures have very real effects on their lives. As a New Yorker, I know that all too well. So, on behalf of my fellow New Yorkers, I urge the commission to think in terms of the human impact as it considers the governmental response to September 11th. Thank You.

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